PD-0287-19
COURT OF CRIMINAL APPEALS
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NO. PD-0287-19

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
8/21/2019
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS,

Appellant,

v.

CESAR RAMIRO ARRELLANO,

Appellee.

On Appeal from Victoria County

BRIEF ON THE MERITS FOR CESAR RAMIRO ARRELLANO

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August 19, 2019

ORAL ARGUMENT NOT PERMITTED

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IN THE COURT OF CRIMINAL APPEALS
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THE STATE OF TEXAS,……Appellant

v.

CESAR RAMIRO ARRELLANO,……...Appellee

* * * * *

CESAR RAMIRO ARRELLANO'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW, CESAR RAMIRO ARRELLANO, by and through his court appointed attorney of record, LUIS A. MARTINEZ, and respectfully files this brief on the merits in the above referenced and entitled cause and would respectfully show unto this Honorable Court of Criminal Appeals as follows:

STATEMENT REGARDING ORAL ARGUMENT

Oral argument was not permitted in this cause of action after the granting of the State Prosecuting Attorney's (hereinafter "SPA") Petition for Discretionary Review.

STATEMENT OF FACTS

On May 9, 2017, Appellee timely filed "Defendant's Motion to Suppress Blood Alcohol Content Analysis Results," which plainly stated the basis for the requested relief was that the warrant was "facially invalid because it fails to meet the statutory requirements of Article 18.04 of the Texas Code of Criminal Procedure." [CR-I-37]. The Appellee appeared with his counsel at a pretrial motions docket at 9:00 a.m. on May 16, 2017. [CR-I-119]. After announcements, both parties were instructed to return after lunch for a hearing on the motion. [RR-I-4, 25]. At the hearing Appellee offered without objection Defendant's Exhibit 1, the "Affidavit for Search Warrant" received from the State during the discovery process. [RR-I-7, 42-52; CR-I-112]. The Appellee then rested. [RR-I-8]. The trial court asked the State's attorney "if he wished to call any witnesses." [RR-I-8]. The prosecutor replied that he did not wish to do so, despite having ample notice of the issue Appellee intended to raise [RR-I-8]. The State then rested as well. [RR-I-8].

Thereafter, Appellee provided the State and the trial court with copies of Article 18.04 of the Texas Code of Criminal Procedure and *Miller v. State,* 703 S.W. 2d 354 before proceeding to argument. [RR-I-8]. Appellee reminded the Court that the 84th Legislature amended the statutory

requisites for a valid search warrant, effective September 1, 2015, in response to widely publicized law enforcement corruption in Hidalgo County, Texas. [RR-1-10-11]. Appellee then showed the Court that the search warrant in this case did not comply with Article 18.04(5), and was therefore facially invalid. As such, Appellee prayed that the evidence it gave rise to be excluded. [RR-I-10-12].

The State responded by arguing that the warrant relied upon in Appellee's case was based upon probable cause, and that the arresting officer acted in objective good faith upon it. [RR-I-13-16]. Appellee objected to argument regarding whether the officer relied in good faith on the warrant because the State had not called Officer Garcia as a witness [RR-I-16]. Moreover, Appellee pointed out that the good faith exception of Article 38.23(b) was not applicable in this case since the warrant was facially invalid. [RR-I-16-17, 21]. In support of this position, Appellee cited the 38.23(b) analysis of *McClintock v. State,* 541 S.W.3d 63, 73 (Tex. Crim. App. 2017).

The State's argument then shifted to the legibility of the magistrate's signature. Appellee replied by clarifying that the signature's legibility was not the issue being raised. [RR-I-20]. The issue instead was that the search warrant "does not comport with the law that was in place at the time" it was

executed because it did not meet the requirements of Article 18.04(5). [RR-I-20]. After additional argument from the parties, the Trial Court instructed both parties to prepare a brief containing the "arguments supporting your positions." [RR-I-20-25, 26].

Appellee filed a brief as instructed, and the State filed a "letter brief." [CR-I-43, 67]. Additionally, the Appellee's brief summarized the issues raised and arguments advanced at the suppression hearing. [CR-I-43, 67].

SUMMARY OF THE ARGUMENT

In 2017, this Honorable Court of Criminal Appeals wrote that, in executing a warrant, an officer "acts in objective good faith reliance upon" the warrant, "as long as the warrant is facially valid." *McClintock v. State*, 541 S.W.3d 63, 73 (Tex. Crim. App. 2017). "Facially valid" must include, at the very least, the minimum facial requirements of a warrant under art. 18.04 of the Texas Code of Criminal Procedure. A search warrant shall be sufficient under art. 18.04 of the code of criminal procedure if it contains, among other requirements, the magistrate's name appearing in clearly legible handwriting or in typewritten form with the magistrate's signature. It follows, logically, that where a warrant is not sufficient, it is not facially valid, and that an officer, nor the State, may rely upon objective good faith

in successfully defending an exclusionary challenge. It also follows that once a warrant is shown to be facially invalid, the "good faith" exception may not apply. On this record, and on the arguments made to the Trial Court, the Trial Court did not abuse its discretion in granting Appellee's motion to suppress.

ARGUMENT

I. Does Texas Code of Criminal Procedure Article 38.23(b), the "good faith" exception, apply to warrants that do not have the magistrate's name printed or typed under his signature?

The answer to the SPA's question is "No." In this case and under these facts, the "good faith" exception does not apply. The answer to this question is clear when applying the 13th Court of Appeals reasoning and Appellee's trial court and appellate reasoning. The "good faith" exception's applicability starts with the presence of facially valid warrant. *See McClintock v. State*, 541 S.W.3d 63, 73 (Tex. Crim. App. 2017)

A. Art. 18.04 of the Tex. Code Crim. Proc. provides the requisites for a search warrant in Texas.

Art. 18.04 of the Texas Code of Criminal Procedures provides the requisites for a search warrant. A search warrant must be "clearly sufficiently specific to meet the mandates of the Fourth Amendment, the Texas Constitution, and article 18.04 of the Code." TEX. CODE OF CRIM.

PROC. art. 18.04; *Ramirez v. State*, 345 S.W.3d 631, (Tex. App.—San Antonio 2011, no pet.); *Miller v. State*, 703 S.W.2d 352, 353 (Tex. App.—Corpus Christi 1985, pet ref'd). Prior to 2015, a search warrant satisfied art. 18.04 if it contained the following: 1) that it run in the name of "The State of Texas;" 2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched; 3) that it command any peace officer of the proper county to search forthwith the person, place of thing named; 4) that it be dated and signed by the magistrate." In 2015, however, this statute was amended. Since September of 2015, this statute has included an additional requirement. *See* HOUSE COMM. ON CRIMINAL JURISPRUDENCE, Bill Analysis, Tex. H.B. 644, 84th Leg. R.S. (2015). After 2015, the Legislature passed an additional requirement: that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature. *See* TEX. CODE CRIM. PROC. art. 18.04(5). This was the law at the time Office Phillip Garcia applied for a search warrant to draw Appellee's blood.

Appellee's trial counsel objected to the warrant at issue in this case, in writing through Appellee's motion in the trial court, specifically alleging that the warrant was "facially invalid because it fails to meet the statutory

requirements of Article 18.04 of the Texas Code of Criminal Procedure." There is no argument from the State Prosecuting Attorney that the warrant used to obtain Appellee's blood, in fact, complied with the requirement that the magistrate's signature be clearly legible or in typewritten form with the magistrate's signature. It would appear that the SPA has conceded that the search warrant in this case did not comply with this requirement specifically, 18.04(5). *See* TEX. CODE OF CRIM. PROC. art 18.04(5).

B. *McClintock v. State of Texas.*

In 2017, this Honorable Court of Criminal Appeals wrote that, in executing a warrant, an officer "acts in objective good faith reliance upon" the warrant, "as long as the warrant is facially valid." *McClintock v. State*, 541 S.W.3d 63, 73 (Tex. Crim. App. 2017). Plain reading suggests that reliance on a warrant, in objective good faith, must start with a warrant that is facially valid. Although the "good faith" exception is applicable in and through art. 38.32(b) of the Texas Code of Criminal Procedure, there are limits to this exception as appears to be acknowledged by *McClintock*. Likewise, the U.S. Supreme Court, has put limits on the "good faith" exception for exclusion of evidence, including where a warrant is "so facially deficient…that the executing officers cannot reasonably presume it to be valid." *United States v. Leon*, 468 U.S. 897, 923 (1984).

C. Exclusion of the evidence in this case promotes the purposes of the Exclusionary Rule itself.

The SPA, citing *Leon,* argues that neither the absence (upon review) of probable cause nor "a technically defective warrant" justifies exclusion "except in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *United States v. Leon*, 468 U.S. 897, 918 (1984). The SPA continues its argument, again citing *Leon*, that "In short, where the officer's conduct is objectively reasonable, excluding the evidence will not further the ends of the exclusionary rule in any appreciable way" and "can in no way affect his future conduct unless it is to make him less willing to do his duty." *Leon*, 468 U.S. at 919-20.

First, it is important to note that, in Texas, a warrant for a blood draw is required in the absence of consent, or the lack of a warrant results in a violation of the 4th Amendment. *See State v. Villarreal*, 475 S.W.3d784 (Tex. Crim. App. 2014). To say that the exclusion of the evidence in this case, in these circumstances would affect any officer's willingness to seek a warrant after a refusal to provide a blood sample from a suspect is therefore a non-starter. Officer Garcia did not have the discretion to take a blood sample without a warrant or consent under the law at the time and now. The failure to seek a warrant in the future would not lead to anything other than

exclusion. Excluding the subject evidence, obtained with the warrant in this case, would not result in Officer Garcia deciding on his own that he will never seek a warrant for blood in the future, nor any other officer in this situation. To do so would invalidate the results of a blood draw for use as evidence on the warrant requirement.

However, how would the exclusion of the evidence in a situation such as this affect Officer Garcia, or other officer's conduct, in the future? It would make law enforcement officers *more* diligent and *more* willing to comply with their duty in obtaining warrants, especially with respect to the requisites of 18.04 of the Texas Code of Criminal Procedure. This motivation to ensure diligence in obtaining a facially valid warrant is not onerous or cumbersome and would not require much in the way of effort in the future of any police officer seeking a warrant.

Making sure a search warrant complies with the requisites of art. 18.04 does not require legal analysis or legal training. The requisites are plain to read and understand without the benefit of a law degree. Asking a police officer to insure the basic requisites of the warrant found in 18.04 are not cumbersome or difficult to verify prior to execution of the warrant. For the most part, is it legibly signed by a magistrate, is it dated, does it give a basic understanding of what is to taken or searched, does it command a

peace officer in the county to execute the warrant and does it run in the name of the State of Texas? Requiring this of law enforcement does not interfere with other "good faith" reliance analysis where the substantive law changes or the application of substantive law to particular facts is changed by new interpretation, requiring not only a firm understanding of case law but also a fair amount of prescience.

By contrast, consider the following. Those who lived in the time of writing and cashing checks are familiar with the basic requisites of the use of a check. Does someone expect to go to a bank and cash a check that is not dated properly? Does someone expect to cash a check that is not signed? Most people, with or without a legal education, were fairly believed to understand these principles and did not have to be employed in the banking system in order to know, understand, or observe them. Quite simply, a person could not reasonably believe he could cash an unsigned check or a post dated check. Compare however, most bank tellers working at a bank would not be employed long for failing to observe these simple requirements, (i.e. cashing unsigned or post dated checks at their window), especially when trained to rely on these basic facial requirement of such documents as part of their profession before honoring them.

Police officers must seek warrants from time to time as part of their duties and are trained to do so. They may be required by the law in some circumstances to do so, as in this case. It does not seem unfair that they should procure a minimally sufficient and valid warrant in order to rely on them in objective good faith. Those minimum requirements are found in art. 18.04. It is not a high, nor unfair burden to ask them to get a facially valid warrant, before be able to rely upon their "good faith" reliance on same.

II. Whether or not Appellee bore the burden of proof under 38.23, Appellee has not failed to meet that burden.

The SPA urges this Court of Criminal Appeals to consider the applicable burdens for the Appellee in this case. Despite the SPA's acknowledgment that the State did not preserve or challenge on appeal Appellee's satisfaction of his threshold burden, nonetheless, Appellee offers a response. Regardless of the burden placed upon Appellee, the record demonstrates that they were met.

If Appellee bore the burden of proof on art. 38.23(a) and had to disprove the applicability of art. 38.23(b), the Appellee's burden would have to be proved by by a preponderance of the evidence. *White v. State*, 549 S.W.3d 146, 162 (Tex. Crim. App. 2018). Assuming, without conceding that Appellee bore the burden of proving the exception found in 38.23(b),

what more need Appellee have done to prove a statutory violation (art. 18.04) that itself negated the ability to rely on a "good faith" exception found in art. 38.23(b)? The proof of the missing requirement of 18.04(5) in the warrant rendered it facially invalid, and, therefore incapable of being excused by the exception in art. 38.23(b), which is the exact argument and case law Appellee provided to the Trial Court. This might not be true in all cases, but with the unique circumstances of this case, it is.

In this case, Appellee established a statutory violation. It is clear that Appellee did so. The requirements of the contents of a warrant are clear and found in art. 18.04 of the Texas Code of Criminal Procedure. The warrant in this case failed to comply with the requirement that a warrant have a legible signature or a name of the signing magistrate typewritten in the warrant. Appellee's entire argument to the Trial Court was that the warrant was facially deficient for this lacking quality. As *McClintock* established that "good faith" reliance starts with a facially valid warrant, what more needed to be proven for the Trial Court to rule once Appellee showed the warrant to be lacking one of the requisites? Nothing. Appellee met any burden to disprove the applicability of the exception found in 38.23(b) of the Texas Code of Criminal Procedure when Appellee proved the insufficiency of the warrant.

The State also argues that Appellee has the burden of proving a causal connection between the violation and the evidence at issue. As noted previously, in Texas, a warrant for a blood draw is required in the absence of consent, or the lack of a warrant results in a violation of the 4th Amendment. *See State v. Villarreal*, 475 S.W.3d784 (Tex. Crim. App. 2014). In other words, without consent, a warrant was required to draw a specimen of blood. Officer Garcia attempted to obtain a warrant, necessary in this case. Without a warrant, Officer Garcia would not have the ability to compel the blood draw. The warrant was found to be facially invalid. Put simply, the warrant was the vehicle and the connection between the evidence and the violation is clear.

III. The State was not deprived of the opportunity to satisfy whatever burden it had, pretrial or on appeal.

First, Appellee recounts the events prior to the Trial Court's decision. On May 9, 2017, Appellee timely filed "Defendant's Motion to Suppress Blood Alcohol Content Analysis Results," which plainly stated the reason for the requested relief, that being the warrant was "facially invalid because it fails to meet the statutory requirements of Article 18.04 of the Texas Code of Criminal Procedure." [CR-I-37]. Appellee appeared with his counsel at a pretrial motions docket at 9:00 a.m. on May 16, 2017.

[CR-I-119]. After announcements, both parties were instructed to return after lunch for a hearing on the motion. [RR-I-4, 25]. At the hearing Appellee offered without objection Defendant's Exhibit 1, the "Affidavit for Search Warrant" received from the State during the discovery process. [RR-I-7, 42-52; CR-I-112]. Appellee rested. [RR-I-8]. The trial court asked the State's attorney "if he wished to call any witnesses." [RR-I-8]. The State replied that he did not wish to do so, despite having ample notice of the issue Appellee intended to raise [RR-I-8]. The State then rested as well. [RR-I-8].

Thereafter, Appellee provided the State and the trial court with copies of Article 18.04 of the Texas Code of Criminal Procedure and *Miller v. State,* 703 S.W. 2d 354 before proceeding to argument. [RR-I-8]. Appellee reminded the Court that the 84th Legislature amended the statutory requisites for a valid search warrant, effective September 1, 2015, in response to widely publicized law enforcement corruption in Hidalgo County, Texas. [RR-1-10-11]. Appellee then showed the Court that the search warrant in this case did not comply with Article 18.04(5), and was therefore facially invalid. As such, Appellee prayed that the evidence it gave rise to be excluded pursuant to well settled law. [RR-I-

10-12]; *Miller v. State,* 703 S.W. 2d 354, (Tex. App.-Corpus Christi 1985, pet. ref'd).

The State responded by arguing that the warrant relied upon m Appellee's case was based upon probable cause, and that the arresting officer acted in objective good faith upon it. [RR-I-13-16]. Appellee objected to argument regarding whether the officer relied in good faith on the warrant because the State had not called Officer Garcia as a witness [RR- I-16]. Moreover, Appellee pointed out that the good faith exception of Article 38.23(b) was not applicable in this case since the warrant was facially invalid. [RR-I-16-17, 21]. In support of this position, Appellee cited the 38.23(b) analysis of *McClintock v. State,* 541 S.W.3d 63, 73 (Tex. Crim. App. 2017).

The State's argument then shifted to the legibility of the magistrate's signature. Appellee replied by clarifying that the signature's legibility was not the issue being raised. [RR-I-20]. The issue instead was that the search warrant "does not comport with the law that was in place at the time" it was executed because it did not meet the requirements of Article 18.04(5). [RR-I-20]. After additional argument from the State regarding probable cause determinations, good faith reliance, technical defects, the trial court instructed both parties to prepare a brief containing the "arguments

supporting your positions." [RR-I-20-25, 26]. Since both sides had rested, there was no indication from the trial court that these briefs were for any purpose other than to summarize each side's respective positions. [RR-I-8, 26]. The Appellee filed a brief as instructed, and the State filed a "letter brief . [CR-I-43, 67]. Additionally, the Appellee's brief summarized the issues raised and arguments advanced at the suppression hearing, whereas the State's did not. [CR-I-43, 67].

The above represents all the opportunities the State had to provide evidence to the Trial Court. If the State intended to rely on Officer Garcia's testimony to establish "good faith," she certainly had the opportunity. The State also cannot complain now that the "mode of evidence" changed; the Trial Court asked for briefing following the hearing, not additional evidence. Put simply, the State was provided the identical opportunity as Appellee to provide evidence at the hearing, and later allowed the State the same opportunity to crystallize her arguments and objections as afforded to Appellee following the hearing.

In the end, however, as the 13th Court of Appeals pointed out, "a trial judge may use its discretion in deciding what type of information he considers appropriate and reliable in making his pre-trial ruling." *Ford v. State*, 304 S.W.3d 530, 539 (Tex. Crim. App. 2009).

CONCLUSION and PRAYER

WHEREFORE, PREMISES CONSIDERED, CESAR RAMIRO ARRELLANO prays that this Honorable Court affirm the judgment of the Court of Appeals, and for any other relief he may be entitled to in law or in equity.

Respectfully submitted,

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ATTORNEY FOR APPELLEE
CESAR RAMIRO ARRELLANO

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I, the undersigned, hereby certify that the number of words in Appellee's Brief submitted on August 19, 2019, excluding those matters listed in Rule 9.4(i)(3) is 3,494 words.

Luis A. Martinez

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief is being served to those named below in the manner indicated, on this the 19th day August, 2019.

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